



December 7, 2001

Mr. Brett Bray
Director
Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2001-5704

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155826.

The Texas Department of Transportation (the "department") received a request for information related to the original license application and renewal application for a specific Motor Vehicle Board licensee. You state that you do not wish to withhold the requested information, with the exception of social security numbers and driver's license numbers. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that you have notified the licensee of the request for information pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the licensee has not submitted to this office its reasons explaining why the submitted information should not be released. Thus, we turn to your arguments with respect to the submitted information.

Next, we note that in Open Records Letter No. 2001-4775 (2001), this office issued a previous determination in which we concluded that: (1) Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers are excepted from disclosure under section 552.130 of the Government Code and must be withheld by the department; and (2) social security numbers that appear on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships are confidential under section 51.251 of the Occupations Code and, therefore, must be withheld from disclosure under section 552.101 of the Government Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). Thus, the department may rely on that letter ruling as a previous determination regarding the social security numbers and Texas driver's license numbers in the submitted information. *See* Open Records Decision No. 673 (2001) (previous determination exists where requested information is precisely same information addressed in prior attorney general ruling, ruling is addressed to same governmental body, ruling concludes that information is or is not excepted from disclosure, and law, fact, and circumstances on which ruling was based have not changed). In addition, we note that the submitted information includes photocopies of Texas drivers' licenses which the department must also withhold under section 552.130.

You next ask whether the financial information and surety bonds are excepted from disclosure under section 552.101 in conjunction with common-law privacy. The department states that it does not believe the surety bonds are private information. Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the submitted information, we believe that most of it is not confidential based on a common-law right to privacy. In addition, common-law privacy protects the rights of individuals, not corporations. *See* Open Records Decision Nos. 620 (1993), 192 (1978) (corporation has no common-law privacy interest in its financial information); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). We have marked the personal financial information that is private and must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, we conclude that the department may rely on Open Records Letter No. 2001-4775 (2001) as a previous determination to withhold the Texas driver's license numbers under section 552.130 of the Government Code and the social security numbers under section 51.251 of the Occupations Code. In addition, the department must withhold the photocopies of Texas drivers' licenses in the submitted information under section 552.130.

The department must also withhold the personal financial information that we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/sdk

Ref: ID# 155826

Enc: Marked documents

c: Mr. Franklin L. Goodlefy
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(w/o enclosures)